

MONTANA STATE AUDITOR

JOHN MORRISON
STATE AUDITOR



COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

September 12, 2006

BUSINESS, LABOR & ECONOMIC AFFAIRS
EXHIBIT No. 9

IRS DATE 1-23-07
BILL No. SB204

Denise Caspersen
Manager, Collision Division
Automotive Service Association
P.O. Box 929
Bedford, TX 76095-0929

Dear Ms. Caspersen:

This letter is in response to your correspondence which we received on July 7, 2006. You asked about the labor rates in relation to practices by Safeco Insurance Company of America in the Billings, Montana area, and about Safeco writing estimates in independent collision repair shops that happen to be Safeco's direct repair shops.

You also stated that Kevin Phillips, staff attorney, sent a petition to Kelly M. Cannon of Safeco to request how Safeco determines the lowest prevailing market rate for the State of Montana and specifically, the Billings, Montana area. Mr. Phillips was called for active duty and has not been in the office. We have had to contact Safeco for additional information as well.

1. How does Safeco arrive at a prevailing market rate in an area? A prevailing market rate is based on the rates charged by the majority of repair facilities in a specific geographical location. Safeco obtains information about those rates directly from the facilities as a result of paying claims.
2. What is the current prevailing market rate for Billings?

| | | |
|-------|-------|-------|
| Labor | Paint | Frame |
| \$50 | \$28 | \$54 |

The complaints from repair facilities appear to have occurred following the decision by Safeco not to reimburse regular labor costs through supplemental claims. As you know, supplementals are generally used when unforeseen or additional repairs are necessary to restore the vehicle, not for the labor hours that are known at the time of the estimate. Safeco apparently obtained the market information and set the above rates. Although your letter indicates that this issue remains unresolved, to my knowledge we have not received any complaints during this interim time. If there is a specific consumer, claimant or

*where is the documentation?
State Farm
has a survey.*

Phone: 1-800-332-6148 / (406) 444-2040 / Fax: (406) 444-3497

840 Helena Avenue Helena, MT 59601 Website: www.discoveringmontana.com/sao E-Mail: stateauditor@statc.mt.us

Denise Caspersen
Page 2
September 12, 2006

insured, we will need to have their written permission to look into their claim with the insurer.

Your second issue relates to the possible writing of estimates by Safeco adjusters in Safeco direct repair shops. You asked if this practice lends itself to steering or the appearance of steering and if this demonstrates a conflict of interest.

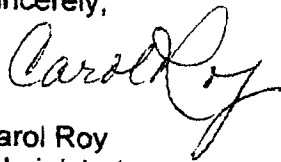
Steering can be very subtle. Perhaps a review of the pertinent portion of statute is appropriate. Section 33-18-224, MCA:

- 33-18-224. Designation of specific automobile body repair businesses prohibited. (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:
- (c) require that a person insured under the policy use a particular automobile body repair business or location; or
 - (d) engage in any act or practice that intimidates, coerces, or threatens an insured person or that provides an incentive or inducement for an insured person to use a particular automobile body repair business or location.

We have not received any written complaints from insured's or claimants that demonstrate intimidation, coercion, threats, incentives, or inducements to use a particular automobile body repair business or location. Again, if you have evidence of any of the above please forward it to my attention and we will set up a file and look into the allegations.

Your time and interest in advocating for your members is appreciated.

Sincerely,



Carol Roy
Administrator
Policyholder Services

CR/sa

Sent 6/30/06



**Automotive
Service
Association®**

Mr. John Morrison
State of Montana Insurance Commissioner
840 Helena Ave
Helena, Montana 59601

Mr. Morrison:

Similar to your task as a public servant representing individuals and mediating insurance related situations, the Automotive Service Association (ASA) has been asked by Ms. Donna Fastenau, co-owner of Hank's Body Shop in Billings, MT to further inquire into Safeco Insurance practices in Billings and Missoula, MT concerning labor rates; and the statewide potential conflict of interest of Safeco writing estimates in independent collision repair shops that happen to be Safeco's direct repair shops. ASA is the largest trade association of its kind, being member-driven by 12,000 independent mechanical and collision shop owners throughout the United States.

Representing independent collision business owners in the state of Montana, I would like to restate the two insurance related items involving Safeco Insurance company and collision businesses in the major Montana cities of Billings and Missoula that were presented to your office in April, 2006 and the actions taken thus far.

1. *Currently Safeco Insurance is not paying the prevailing labor rates in Billings and Missoula, in violation of Montana Code 33-18-222 and 30-14-209.*

Following a complaint letter sent by Ms. Fastenau to the Montana Department of Insurance stating that Safeco Insurance was refusing to pay the prevailing labor rates on work done to cars covered by this insurance vendor, Elias Harman, Compliance Specialist Policy Holder Services at the Montana Department of Insurance, responded that "in order for us to investigate a complaint of the nature you filed, we must have specific claim details and we must have written permission from the insured or claimant to investigate the problem in questions. Unless you (the collision shop) are a party to the loss / damage of property, we cannot investigate your dispute."

Following a complaint letter sent by Mr. Gary Harris, an inquiry by Mr. Frank Truax (file number 34636), Compliance Specialist Policy Holder Services at the Montana Department of Insurance addressing Safeco labor rate determination, a petition was also sent by Montana State Auditor staff attorney Kevin F. Phillips to Kelly M. Cannon, on April 20, 2006, for a formal request to find out how Safeco determines the lowest prevailing market rate for the state of Montana and specifically, the Billings

Street Address
1901 Airport Freeway
Bedford, Texas 76021-5732

Mailing Address
P.O. Box 929
Bedford, Texas 76095-0929

Phone
(800) 272-7467

Fax
(817) 685-0225

E-mail
asainfo@asashop.org

Internet
www.asashop.org





**Automotive
Service
Association®**

Street Address
1901 Airport Freeway
Bedford, Texas 76021-5732

Mailing Address
P.O. Box 929
Bedford, Texas 76095-0929

Phone
(800) 272-7467

Fax
(817) 685-0225

E-mail
asainfo@asashop.org
Internet
www.asashop.org

area. To date, no response from Mr. Kevin Phillips' inquiry has been given to the shops.

According to a response from Mac McCollough, Unit Manager for Safeco Insurance, at the time of the initial inquiry, labor rates in Billings were under evaluation and have since be determined to be \$50.00 per hour for sheet metal labor and paint labor, however Safeco Insurance has not met the prevailing rate for mechanical and frame labor, and paint and materials..

2. The second item is in regard to a statewide potential conflict of interest caused by Safeco Insurance writing estimates out of Safeco's direct repair shops. Does this practice lend itself to steering or the appearance of steering? Does this practice demonstrate a conflict of interest?

Following an inquiry by Mr. Frank Truax, Compliance Specialist Policy Holder Services at the Montana Department of Insurance regarding the Safeco Insurance location practice it was determined "regrettably there is nothing in statue at this time that prevents them (Safeco Insurance) from using the body shop of their choice for doing this."

With this in mind, would it be possible to better explain this process to concerned collision shop owners in an attempt to diminish the conflict of interest and steering appearances and better define "how it is not steering"?

Through the assistance of your department, some progress has been made on these issues, yet the item of prevailing rates in Billings and Missoula remains unresolved and clarity regarding the Safeco Insurance estimate writing procedure would be greatly appreciated.

Encouraging the ASA membership to be a part of the process is essential. ASA appreciates your time and input. If I can provide any information or assistance, please contact me at (817)-358-5236 or denisec@asashop.org.

Respectfully,

Denise Caspersen
Manager, Collision Division
Automotive Service Association

CC: Ms. Donna Fastenau, co-owner of Hank's Body Shop

Sent 5/4/06

Mrs. Pichette,

My name is Dan Risley and I am the Executive Director for the Society of Collision Repair Specialists (SCRS). We are the largest national trade association in the country representing collision repairers. We currently enjoy over 5,000 members.

I am contacting you for assistance and guidance. Over the past several months, members have contacted our office with several issues in Montana both involving Safeco Insurance. We directed them to contact your office as our members have had success in working together with their respective Insurance Commissioners. Unfortunately, they are once again seeking SCRS's help since they were unsuccessful in addressing their issue(s). I am hopeful that you may be able to help. The following are the two issues that have been brought to our attention. It is important to note that SCRS tag line is "Working Together Is The Most Important Work We Do". We are an association that seeks to work together with insurers, Dept. of Insurance etc., to amicably address issues as they arise.

- 1.) Safeco Insurance is not paying the prevailing labor rate in Billings or Missoula. They were paying the prevailing rate in Billings but recently gave notice that they won't pay it. Apparently this is only a Safeco issue as other insurers in both of those cities pay the prevailing market rate. How should our members proceed forward in addressing this issue if in fact Safeco is not paying the prevailing market rate? What does the law state in Montana regarding paying less than the prevailing market rate?
- 2.) Several members have called to inquire about the potential conflict of interest caused by Safeco Insurance writing estimates out of two different collision repair facilities in Billings. We believe this inhibits a free market and has the potential for insured's to be steered to those collision repair facilities. Can you please provide some insight as to whether or not this is legal, is there a conflict of interest and what if anything can our members do? SCRS does not support or denounce direct repair programs because we believe it is a decision that is made on an individual basis as to whether or not it is good for their business. We do support a free and open marketplace where the consumer has the right to choose where to have their vehicle repaired.

Any assistance would be greatly appreciated as "Working Together Is The Most Important Work We Do". If you should have any questions or concerns please do not hesitate to contact me at (708) 598-3384 or drisley7@comcast.net.

Sincerely,

Dan

Dan Risley
SCRS Executive Director

Office: 708.598.3384
Cell: 708.250.7718

"A true friend knows your weaknesses but shows you your strengths;
feels your fears but fortifies your faith; sees your anxieties but frees
your spirit; recognizes your disabilities but emphasizes your
possibilities"

William Arthur Edwards

*This letter was
never answered*